

Exhibit A

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and the conduct complained of Third, it must be likely ... that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. 560–61 (internal citations and quotation marks omitted). The issue presented in *Spokeo* was whether the violation of a procedural right granted by statute presents an injury sufficient to constitute an “injury-in-fact” and satisfy the “ ‘[f]irst and foremost’ of standing’s three elements.” *Spokeo*, 136 S. Ct. at 1547.

While the Supreme Court did not change the rule for establishing standing in *Spokeo*, it used strong language indicating that a thorough discussion of concreteness is necessary in order for a court to determine whether there has been an injury-in-fact. *Id.* at 1545. The Court made it clear that the requirements of particularization and concreteness required separate analyses and that neither requirement alone was sufficient. *Id.* at 1548 (“Particularization is necessary to establish injury in fact, but it is not sufficient. An injury in fact must also be ‘concrete.’ ”). In determining whether there is a concrete injury, the presentation of an alleged statutory violation is not always sufficient. *Id.* at 1549 (“[Plaintiff] could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III.”). However, the Court confirmed that “because Congress is well positioned to identify intangible harms that meet minimum Article III requirements [it] may elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.” *Id.* (internal quotation marks omitted). Essentially, “the question framed by [the

Court’s] discussion [is] whether the particular procedural violations alleged in [a] case entail a degree of risk sufficient to meet the concreteness requirement.” *Spokeo*, 136 S. Ct. at 1550.

*2 We recently discussed *Spokeo*’s impact on Article III standing in *In re Nickelodeon Consumer Privacy Litig.*, No. 15-1441, 2016 WL 3513782 (3d Cir. June 27, 2016). There, we interpreted *Spokeo* to say that “even certain kinds of ‘intangible’ harms can be ‘concrete’ for purposes of Article III What a plaintiff cannot do ... is treat a ‘bare procedural violation ... [that] may result in no harm’ as an Article III injury-in-fact.” *Id.* at *7 (quoting *Spokeo*, 136 S. Ct. at 1550). We observed that “in some cases an injury-in-fact may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” *Nickelodeon*, 2016 WL 3513782 at *6. Specifically, we addressed the Supreme Court’s deference to Congress, noting that “*Spokeo* directs us to consider whether an alleged injury-in-fact ‘has traditionally been regarded as providing a basis for lawsuit,’ ” and “Congress’s judgment on such matters is ... ‘instructive and important.’ ” *Id.* at *7 (quoting *Spokeo*, 136 S. Ct. at 1549).

Given the Supreme Court’s directive in *Spokeo* regarding the need for a court to specifically address concreteness and particularization, we will remand this case to the District Court to determine in the first instance whether Bock has Article III standing.

All Citations

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Footnotes

- 1 The District Court had jurisdiction pursuant to 28 U.S.C. § 1331; we have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise de novo review over an order granting summary judgment. *Curley v. Klem*, 298 F.3d 271, 276 (3d Cir. 2002).

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